

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
November 14, 2008 Session

PETRA SMITH v. JAMES CALVERT SMITH

Appeal from the Circuit Court for Montgomery County
No. 50501068 Ross Hicks, Judge

No. M2007-02650-COA-R3-CV - Filed December 8, 2008

In this divorce action, Wife filed a motion to alter or amend the final judgment arguing that the decree did not accurately reflect the judge's oral ruling declaring the parties divorced but instead stated the divorce was granted to Husband based on Wife's inappropriate marital conduct. Wife appeals from the trial court's order denying her motion to alter or amend the divorce decree. We affirm.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

ANDY D. BENNETT, J., delivered the opinion of the court, in which RICHARD H. DINKINS, J., joined. PATRICIA J. COTTRELL, P.J., M.S., not participating.

Patricia A. Rust, Clarksville, Tennessee, for the appellant, Petra Smith.

Bradley M. Carter, Clarksville, Tennessee, for the appellee, James Calvert Smith.

OPINION

Petra Smith filed for divorce from her husband, James Calvert Smith, on December 30, 2005. Mr. Smith filed an answer and counter-complaint for divorce on March 3, 2006. A trial was held on August 13, 2007. The trial court made its ruling from the bench and declared the parties divorced. Husband was designated the primary residential parent for the parties' two minor children. The arrangements in the temporary parenting plan were to continue with Wife having parenting time during specified holidays and vacations. Wife was ordered to pay child support in accordance with the Child Support Guidelines and was found to be in need of rehabilitative alimony. The court ordered rehabilitative alimony by setting Wife's child support obligations to begin three years after entry of the divorce or on September 1, 2010, in lieu of Husband sending alimony during that period.¹

¹The trial court's written order says, "Wife is in need of rehabilitative alimony, and shall receive rehabilitative alimony by not being ordered to pay child support to Mr. Smith for three (3) years or until September 1, 2010."

Throughout the divorce proceedings, Husband was represented by Bradley M. Carter. Following trial, Mr. Carter prepared the final order of divorce, including the permanent parenting plan and child support worksheet, and sent a copy to Wife's attorney, Patricia A. Rust, for her review. It is unclear exactly when Ms. Rust received the initial draft.² By the time Ms. Rust reviewed the contents of the order, Mr. Carter had submitted it to the court. The order was delivered to the judge more than 45 days after trial in violation of local rules requiring orders to be submitted within 10 days of the day the judgment is rendered. Nevertheless, the order was signed by the judge on October 5, 2007. Ms. Rust did not prepare or submit a competing order for the court's consideration, despite a local rule requiring her to do so if she did not agree with opposing counsel's proposed order.

On October 10, 2007, Wife moved to alter or amend the final decree of divorce pursuant to Tenn. R. Civ. P. 59.04 arguing that the order did not accurately reflect the evidence presented at trial or the court's ruling. Specifically, Wife took issue with the fact that the written order awarded Husband the divorce and stated Wife's inappropriate marital conduct was grounds for divorce when the trial court did not make a finding of fault in its oral ruling. After a hearing, the trial court denied Wife's motion to alter or amend on October 25, 2007. Wife appeals, claiming the written order should not have contained a finding of fault against her.³

ANALYSIS

We review a trial court's denial of a Rule 59 motion to alter or amend a judgment under an abuse of discretion standard. *Chambliss v. Stohler*, 124 S.W.3d 116, 120 (Tenn. Ct. App. 2003). A trial court abuses its discretion only when it has applied an incorrect legal standard or has reached a decision which is against logic or reasoning that caused an injustice to the party complaining. *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001).

Motions to alter or amend a judgment pursuant to Tenn. R. Civ. P. 59 may be granted "(1) when the controlling law changes before a judgment becomes final, (2) when previously unavailable evidence becomes available, or (3) when, for sui generis reasons, a judgment should be amended to correct a clear error of law or to prevent injustice." *Whalum v. Marshall*, 224 S.W.3d 169, 175 (Tenn. Ct. App. 2006). As the moving party, Wife had the burden of demonstrating a basis for amending the judgment. After reviewing the record, we have determined that Wife failed to meet her burden and, therefore, find the trial court did not abuse its discretion in denying Wife's motion.

The transcript of the court's ruling from the divorce proceedings reveals the judge stated that "[t]he parties are declared divorced." No additional findings with respect to the parties' fault or

²Mr. Carter contends he sent Ms. Rust a draft of the order two weeks after the trial. Either Ms. Rust or Wife lost the first draft and had to request that Mr. Carter send a second copy of the proposed order for their review.

³Wife has waived her appeal on the issues related to child support. Furthermore, she does not claim that the evidence preponderates against the finding of fault. She views the written finding as an "injustice" because the trial court did not mention fault in its oral ruling.

grounds for divorce appear in the transcript. The order prepared by Mr. Carter enumerated the court's findings of fact and then listed the decree of the court based on those findings. Page 1 of the order reads: "The parties are hereby declared divorced." On page 3, the order states: "Husband is awarded a divorce from Wife on the basis of Wife's inappropriate marital conduct as provided in Tenn. Code Ann. § 36-4-101(11). Wife's *Complaint for Divorce* is dismissed." On its face, the order could be viewed as inconsistent with the court's ruling from the bench as to grounds for divorce. However, it is well-settled that a court speaks through its orders, not through transcripts. *In re Adoption of E.N.R.*, 42 S.W.3d 26, 31 (Tenn. 2001).

Wife's motion to alter or amend clearly outlined the discrepancy between the ruling in open court and the language appearing in the final order. The transcript of the court's ruling was attached in support of the motion. Likewise, Ms. Rust raised the argument at the October 25, 2007 hearing. In response, Mr. Carter stated that he "prepared the order to the best of [his] knowledge based on [his] interpretation and what was expressly stated in the trial transcript." The trial court issued its order denying Wife's motion to alter or amend "[a]fter reviewing the file and arguments of counsel."⁴ Based on the language in the final order and absent any evidence to the contrary, we presume that the trial court fully and correctly considered all issues properly presented to it. *See Richards v. Taylor*, 926 S.W.2d 569, 570 (Tenn. Ct. App. 1996).

While the purpose of a Rule 59.04 motion is to prevent unnecessary appeals by providing trial courts with an opportunity to correct errors, *Whalum*, 224 S.W.3d at 175, Wife failed to show that the language at issue was truly an error or how the alleged error caused her an injustice. Furthermore, Wife failed to demonstrate on appeal that the trial court applied an incorrect legal standard or that its judgment was against logic or reasoning and, therefore, failed demonstrate an abuse of discretion. The order of the circuit court denying Wife's motion to alter or amend the final decree of absolute divorce is affirmed. Costs of appeal are assessed against the appellant, Petra Smith, for which execution may issue if necessary.

ANDY D. BENNETT, JUDGE

⁴During the motion hearing, the court reiterated the importance of complying with the deadlines established by the local rules and faulted both parties for the failure to comply with the 10-day filing requirement.